

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

FERRARA LAND MANAGEMENT MISSISSIPPI, LLC

PLAINTIFF

Versus

Cause No. 1:19-CV-00956-HSO-JCG

LANDMARK AMERICAN INSURANCE COMPANY;
and JOHN DOES A, B, C

DEFENDANTS

PLAINTIFF'S MOTION TO STRIKE LANDMARK'S
MOTION [174] *IN LIMINE* AND MEMORANDUM [175]

Plaintiff files this motion to strike Landmark's [174] Motion *in Limine* and [175] Memorandum as follows:

1. Through its [174] [175] Motion, Landmark seeks to exclude the testimony of Plaintiff's designated non-retained experts, Peter Butera, David Best, James Holland, and Jamie Broussard.
2. Each of these individuals was designated by Plaintiff as a non-retained expert in this case. (See Plaintiff's Designation of Experts, [130-1])
3. Landmark's effort to exclude the testimony of Plaintiff's designated non-retained experts through its motion *in limine* represents an impermissible attempt to end-run the deadline for filing motions challenging and/or opposing an opposing party's expert. L.U.Civ.R. 7(b)(2)(D) mandates

Unless otherwise ordered by the Case Management Order, all case-dispositive motions *and* motions challenging an opposing party's expert must be filed no later than fourteen calendar days after the discovery deadline.

(emphasis added)

4. The Court's deadline for filing "all dispositive motions and Daubert-type motions challenging another party's expert" was November 13, 2020. ([16], as extended by TEXT ONLY ORDER dated September 8, 2020)
5. Similarly, L.U.Civ.R. 7(b)(2)(E) mandates:

Motions *in limine* other than motions challenging another party's expert must be filed no later than fourteen calendar days before the pretrial conference, and all responses must be filed no later than 7 calendar days before the pretrial conference.

(emphasis added)

6. Here, although styled as a motion *in limine*, the form of Landmark's motion clearly identifies it as a motion challenging and/or opposing Plaintiff's designated experts. *Moody Nat. Bank of Galveston v. GE Life and Annuity Assur. Co.*, 383 F.3d 249, 251 (5th Cir. 2004) ("A motion's substance, not its form controls" regardless of the motion's caption.)

7. L.U.Civ.R. 7(b)(11) provides:

Untimely Motions. Any nondispositive motion served beyond the motion deadline imposed in the Case Management Order may be denied solely because the motion is not timely served.

8. Landmark's motion should be stricken and/or denied as untimely, because it violates Local Rules 7(b)(2)(D) and (E); and because it was not filed by the deadline for filing motions challenging experts set by the Court's Case Management Order.

9. Due to the concise, procedural nature of this Motion, Plaintiff respectfully requests it be excused from the obligation of filing a separate memorandum.

WHEREFORE PREMISES CONSIDERED, Plaintiff respectfully requests this Court enter is order striking Landmark's [174] [175] Motion *in Limine*, and granting any additional relief deemed appropriate by this Court.

Respectfully submitted this 2nd day of April, 2021.

Ferrara Land Management Mississippi,
Plaintiff

By: /s/ Christopher C. Van Cleave
CHRISTOPHER C. VAN CLEAVE
(MSB #10796)

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Certificate of Service

I, Christopher C. Van Cleave, do hereby certify that on this date electronically filed the foregoing with the Clerk of Court through the EFC system, giving electronic notice to counsel of record.

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This the 2nd day of April, 2021.

By: /s/ Christopher C. Van Cleave
Christopher C. Van Cleave (MSB#10796)